IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 486 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KARA RAYADE BHUTIYA MER

Appearance:

1. Criminal Appeal No. 486 of 2001

Mr A J Desai, A. PUBLIC PROSECUTOR for Petitioner No. 1

..... for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.P.BUCH

Date of decision: 30/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

The appellant State has preferred this appeal under section 378(1)(3) of the Code of Criminal Procedure, 1973 against the order of acquittal passed by the learned Special Judge, Jamnagar in Special Criminal Case No.1 of 2000.

2. Mr A J Desai, learned APP has placed for our perusal the copies of the record namely; the further statement of the accused under Section 313 of the Criminal Procedure Code. Copy of the charge framed against the respondent, copy of the panchnama, as also copies of the deposition of the witnesses recorded in the said case.

3. The prosecution case leading to the filing of the present appeal shortly stated is that an information was received on 20.11.1999 by Incharge, Deputy Superintendent of Police, Headquarter, Jamnagar to the effect that Kara Rayade Bhutiya Mer residing at Village Kana Shikari, near Panna Dam, has in his possession contraband, Ganja, which he has been selling. On the basis of the said information, with a view to verify the same, Head Constable, Rajendrasingh Zala was sent in cognito. Head Constable Zala reported that the accused is present in his Wadi whereupon immediately Head Constable Babulal Parmar was asked to bring two panchas and thereafter along with the panchas and the police staff members, having been acquainted with the details of the information received, preliminary panchnama was drawn; that at about 21.15 hours on 20.11.1999, P.I. Vaghela along with the two panchas and other police staff members went in raid to the said place. Before going for raid, an information in writing was sent to the District Superintendent of Police, Jamnagar for making note in the station dairy kept with Medhpar police station. The raiding party reached at the Wadi near Panna Dam in Village Kana Shikari at 22.00 hours. There one house was found wherein the accused was present and he was informed about the information received and his signature was obtained thereon and search was made in his residential room and veranda. Nothing objectionable could be found. Adjacent to the room of the accused, there were two rooms made of cement sheets and one of those rooms has doors and windows. Search was made of the bags filled with fertilizers and in one white bag, Ganja was found. The accused was asked if he had permit or licence to keep the Ganja but the accused could not produce any permit or licence. Thereafter, the accused was asked whether the

search should be conducted in the presence of the Gazetted Officer or not but he declined to have the presence of any such Officer. Ganja weighing 5 Kgs. and 150 grms was found, two samples of 50 grms each were taken for analysis and slips containing signatures of the panchas were kept in the two sample packets. The accused was thereafter arrested. A complaint was filed by P.I. Vaghela against the accused and on completion of the investigation, charge sheet was filed against the accused for offence under section 20(b) (1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act').

4. The accused was produced before the Court. Thereafter, charge was framed against the accused. The accused denied the charges levelled against him and claimed to be tried. The prosecution adduced oral as well as documentary evidence to bring home the guilt to the accused and thereafter statement of the accused under section 313 of the Criminal Procedure Code was recorded. The learned trial Judge, on appreciation of the evidence, acquitted the accused of the charges levelled against him. It is this judgment of acquittal which is assailed in this appeal by the State.

5. We have perused the copies of the trial court records. Deva Khima is examined at Exh.10 and the accused is stated to have been cultivating the agricultural land of one Deva Khima, who has deposed that his agricultural land was given to the accused for two years for cultivation and taking crop of Mandvi (groundnuts) and Bajra. According to Deva Khima, the land was given to the accused for cultivation and that there are kachha rooms in the agricultural land. It is suggested from the evidence of Deva Khima that he does not know the revenue number of his land and he does not know the accused. According to the prosecution, the accused belongs to village Koyali, Taluka Vanthali, District Junagadh whereas Deva Khima belongs to village Kana Shikari. The copy of village Form No.7/12 is at Exh. 38. Deva Khima is shown to be the tenant in Survey No.102, in the year 1999-2000 and the crop which is stated to have been taken from the field is Juwar, Wal, Gadab etc. It may be seen that the crops shown in Village Form 7/12 Exh.38 does not tally with the crops stated by the prosecution witness Deva Khima vide Exh.10. Evidence of Talati-cum-Mantri, Purshottam Mohandas at Exh.37 suggests that he did not visit the agricultural land bearing survey no.102 for the purpose of finding out as to who has been actually cultivating the land. It is not suggested from his evidence that he had seen the

accused cultivating and taking crop from this land. There is no explanation coming forth for the remarks given in Exh.38. In column no.14 of Village Form 7/12 Exh.38 it is mentioned that the accused has sown the land but there is no evidence as regards this endorsement.

6. Perusal of the copy of the panchnama Exh.21 suggests that the room wherein the accused was residing was searched but nothing objectionable was found from the said room. It is also suggested from the panchnama that the adjoining room was searched and in the adjoining room from the white bag of fertilizer, contraband Ganja was found. No article is found from this room which can connect the recovery of Ganja with the accused inasmuch as nothing belonging to the accused was found from the room wherefrom the contraband Ganja was found or recovered. Thus, it is suggested from the evidence that the room in which the accused was found residing, nothing objectionable is found whereas the room from which the contraband Ganja is recovered does not show any connection with the accused. It can hardly be gainsaid that the prosecution in evidence, to bring home the guilt to the accused, has to prove the ownership or possession of the place wherefrom the contraband Ganja is recovered and it is also required to be shown by the prosecution that this contraband Ganja has some connection with the accused.

6. In the instant case, considering the evidence on record, no interference is called for in the judgment of acquittal rendered by the learned trial Judge and considering the record of the case, copies whereof have been placed and perused by us suggest that there is no substance in the present appeal and the appeal is liable to be dismissed at the admission stage. The appeal stands dismissed accordingly.

30.9.2002 [N G Nandi, J.]

[D P Buch, J.]
msp